

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No.496 OF 2006

Thursday this the 21st day of June, 2007

CORAM :

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Dr. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

1. A.Narayanankutty
Technician Grade II / Air conditioning
Office of the Senior Section Engineer, Electrical
Southern Railway / Coimbatore
Residing at : "Athira", Kallekkad P.O, Palghat District
2. M.Mohandas
Technician Grade II / Air conditioning
Office of the Senior Section Engineer, Electrical
Southern Railway / mangalore
Residing at : "Saketham", Post Iringol
Vadakara, Calicut : Applicants

(By Advocate Mr. TCG Swamy)

Versus

1. Union of India represented by the General Manager
Southern Railway, Headquarters Office
Park Town P.O., Chennai - 3
2. The Senior Divisional Personnel Officer
Southern Railway, Palghat Division, Palghat
3. R.Parisuthan
Technician Grade I / Air conditioning
Office of the Senior Section Engineer, Electrical
Southern Railway / Coimbatore
4. K.Gopalan
Technician Grade II / Air conditioning
Office of the Senior Section Engineer, Electrical
Southern Railway / Mangalore : Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 13.06.2007, the Tribunal on 21.06.2007 delivered the following :

ORDER

HON'BLE Dr. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

1. The applicants of this OA are presently employed as technicians Grade II in the air-conditioning wing of the Electrical Department of

Southern Railways, Palghat Division. They are aggrieved by the order issued by the respondents promoting respondents No.3 and 4 (who are junior to them) as Technician Grade I. The order promoting 13 employees as Technician Grade I including the respondents No.3 and 4 were issued by respondent No.2 on 7.9.2005 (A-2) . It is mentioned in this promotion order that these employees are promoted against the vacancies arising out of a restructuring exercise. The respondents have applied the policy of reservation for SC/STs for effecting promotions to the vacancies arising out of restructuring. In the seniority list published by the respondent No.2 on 14.11.2002, respondents No.3 and 4 are placed at serial Nos.25 and 28 while the applicants are serial Nos.18 and 17 respectively. This is a combined seniority list for all the Technicians in the Air Conditioning wing in various grades. While applying the policy of reservation the respondents have followed clause No.14 of the Railway Board order No.177/2003 dated 9.10.2003 relating to restructuring of Group C and D cadres in the Railways. Respondents No.3 and 4 have found a place in the promotion order because of the application of reservation policy, and not by virtue of their seniority.

2. The applicants submitted a representation citing the legal position that for filling up upgraded posts arising out of restructuring, reservation is not be applied. as per the ruling given by the Apex Court The applicants also cited the order of this Tribunal in OA No.601/04 and connected cases dated 21.11.2005. However there has been no response from the respondents. This Tribunal had set aside para 14 of the Railway Board's order dated 9.10.2003 which has been relied on by the respondents while issuing the impugned order.

3. The applicants are seeking relief on the basis of the ruling of the Hon'ble Supreme Court in Contempt petition (C) No.304 of 1999 in CA



No.1481 of 1996 – all India Non-SC/ST Employees Association (Railway) vs. V.K.Agarwal and others as well as this Tribunal in O.A. 601 of 2004. It was held by the Apex Court in the case supra that “where the total number of posts remained unaltered, though in different scales of pay, as a result of re-grouping and the effect of which may be that some of the employees who were in the pay scale of Rs.550-700 will go into the higher scales, it would be a case of upgradation of posts and not a case of additional vacancy or post being created to which the reservation would apply. It is only if in addition to the total number of existing posts some additional posts are created that in respect of those additional posts, the reservation will apply ”

4. The Department of Personnel and Training has also in its OM dated 25th October 2004 directed the Ministry of Railways to implement the directions of the Supreme Court and not to apply reservation while filling up the posts that are upgraded on account of restructuring.
5. The respondents have filed a reply. They have inter alia contended that reservation is required to be extended to these vacancies as per the judgment given by the Constitution Bench of the Hon'ble Supreme Court in R.K.Sabharwal case; that reservation has to be given for each grade in a category; that cadre for the purpose of a roster shall mean a particular grade. As per the reply, the number of posts in the grade of Senior Technician has increased from 2 to 5 after restructuring; similarly the number of posts of Technician Grade I has increased from 19 to 23. However, the total number of posts for all the grades taken together remains the same level at 55 because there has been reduction in grades II and III. The respondents have also mentioned that the order passed by




this Tribunal in OA601/2004 has been challenged in the Hon'ble High Court and it is pending.

6. We have heard the learned counsel for the applicant Shri T.C.G.Swamy and learned counsel for the respondents No.1 and 2 Shri Thomas Mathew Nellimoottil. There has been no reply from respondents No.3 and 4 although they were served notices. We have also studied the material on record carefully.

7. The issue involved in this OA is the same that was agitated before this Tribunal in OA601/2004 and batch of other applications. This Tribunal in its order pronounced on 21st November 2005 had held that "we therefore in respectful agreement with the common order of the Full Bench dated 10.8.2005 in the case of P.S.Rajput and two others and Mohd. Niyazuddin and ten others dated 10.8.05 quash and set aside Clause 14 of the Annexure A1 order dated 9.10.2003 issued by the Ministry of Railways (Railway Board)". The Tribunal had based its decision on the ruling given by the Full Bench of the Central Administrative Tribunal in OA 933/04 and OA 778/04. The categorical and unequivocal finding of the Full Bench was that the "upgradation of the cadre as a result of the restructuring and adjustment of existing staff will not be termed as promotion attracting the principles of reservation in favour of SC/ST candidates". In arriving at this conclusion the Full Bench had also considered the ruling of the Apex Court in the R.K.Sabharwal case.

8. The same issue was also considered in OA/189 of 2005 by this Tribunal. In that OA the applicants were aggrieved by the promotion of some juniors to the posts of Technician Grade I in the Electrical Loco

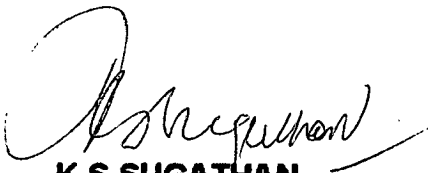


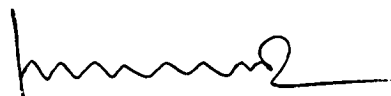
Shed. These promotions were given by applying the policy of reservation to upgraded vacancies due to restructuring. This Tribunal had therefore quashed the promotion orders because para 14 of the Railway Board's order dated 9.10.2003 had already been quashed.

9. It is also important to note in this case that the respondent has published a common seniority list for all grades of the Technicians, not separately for each grade. On this count also the argument of the respondents that each grade should be treated as a cadre appears to be incorrect. Further, the total number of posts in the cadre of Technicians in the Air Conditioning wing after restructuring has remained the same at the level of 55.

10. As the issue involved here is already covered by the two previous orders of this Tribunal which in turn was based on the decision of the Full Bench and the decisions of the Hon'ble Supreme Court on the subject matter, the applicant's prayer deserves to be accepted. Accordingly, **OA is allowed.** The promotion order dated 7.9.2005 is quashed and set aside partially to the extent it relates to the respondents No.3 and 4. The respondents No.1 and 2 are directed to consider the applicants for promotion against the upgraded posts of Technician Grade I and grant all consequential benefits within a period of two months from the date of receipt of copy of this order. No costs.

Dated, the 21st - June, 2007.


K.S.SUGATHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER